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# Gibraltar Land Company d/b/a Countywide Landfill and Local 324, International Union of Operating Engineers, AFL-CIO. Case 7-CA-49546

January 24, 2008

### **DECISION AND ORDER**

### BY MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge filed on May 26, 2006, by Local 324, International Union of Operating Engineers, AFL–CIO (the Union), the General Counsel issued the complaint on July 24, 2006, against Gibraltar Land Company d/b/a Countywide Landfill, the Respondent, alleging that it had violated Section 8(a)(5) and (1) of the Act. On August 4, 2006, the Respondent filed an answer to the complaint. However, by letter dated October 17, 2007, the Respondent withdrew its answer.

On November 20, 2007, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. Thereafter, on November 28, 2007, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

On the entire record in this case, the National Labor Relations Board<sup>1</sup> makes the following

# Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed on or before August 7, 2006, all of the allegations in the complaint could be found to be true.

Although the Respondent filed an answer to the complaint, it subsequently withdrew its answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.<sup>2</sup> Accordingly, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's motion for default judgment.

## FINDINGS OF FACT

#### I. JURISDICTION

At all material times, the Respondent, a corporation with a place of business at 15701 Vreeland Road, Trenton, Michigan, has been engaged in the operation of a landfill that accepts construction and demolition debris. During calendar year 2005, a representative period, the Respondent, in conducting its business operations described above, received gross revenues in excess of \$500,000 and received at its Trenton, Michigan facility waste materials valued in excess of \$50,000 directly from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 324, International Union of Operating Engineers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Michael Wilkinson Owner
Robert Hunt Controller
Anthony Stockman Site Manager

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time operating engineers, including equipment operators, maintenance, land-fill/utility employees, mechanics and yardmen employed by Respondent at its Trenton facility; but excluding all professional employees, office clerical employees, and guards and supervisors as defined in the Act.

At all material times, by virtue of a certification of representative issued by the Board in Case 7–RC–22868 on June 23, 2005, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all times since June 23, 2005, by virtue of Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

<sup>&</sup>lt;sup>2</sup> See Maislin Transport, 274 NLRB 529 (1985).

On about March 24, 2006, the Respondent laid off employee Reginald Truitt.

On about March 31, 2006, the Respondent laid off employee James Howard.

On about June 17, 2006, the Respondent laid off employee David Spurr.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to these changes and the effects of the changes on the unit.

### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.<sup>3</sup>

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally laying off unit employees Reginald Truitt, James Howard, and David Spurr, we shall order the Respondent to bargain on request with the Union and to offer these employees full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1163 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful layoffs, and to notify the laidoff employees in writing that this has been done and that the layoffs will not be used against them in any way.

### **ORDER**

The National Labor Relations Board orders that the Respondent, Gibraltar Land Company d/b/a Countywide Landfill, Trenton, Michigan, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain collectively and in good faith with Local 324, International Union of Operating Engineers, AFL—CIO, as the exclusive collective-bargaining representative of its unit employees by unilaterally laying off unit employees. The appropriate unit is:
  - All full-time and regular part-time operating engineers, including equipment operators, maintenance, landfill/utility employees, mechanics and yardmen employed by Respondent at its Trenton facility; but excluding all professional employees, office clerical employees, and guards and supervisors as defined in the Act.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union concerning the decision to lay off unit employees Reginald Truitt, James Howard, and David Spurr and the effects of that conduct, and reduce to writing and sign any agreement reached as a result of such bargaining.
- (b) Within 14 days from the date of this Order, offer Reginald Truitt, James Howard, and David Spurr full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and any other rights or privileges previously enjoyed.
- (c) Make Reginald Truitt, James Howard, and David Spurr whole for any loss of earnings and other benefits suffered as a result of their unlawful layoffs, with interest, in the manner set forth in the remedy section of this decision.
- (d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful layoffs and, within 3 days thereafter, notify the laid-off employees in writing that this has been done and that the layoffs will not be used against them in any way.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, so-

<sup>&</sup>lt;sup>3</sup> In its letter to the Region withdrawing its answer, the Respondent stated "[t]hat because of adverse business circumstances unrelated to the allegations contained in the Complaint, [the Respondent] has elected to withdraw the Answer filed in response to the Complaint filed herein." It is well settled that an employer's adverse business circumstances do not constitute an adequate defense to the complaint allegations here. See, e.g., *Nick Robilotto, Inc.*, 292 NLRB 1279 (1989).

cial security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- (f) Within 14 days after service by the Region, post at its facility in Trenton, Michigan, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 24, 2006.
- (g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 24, 2008

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

# FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 324, International Union of Operating Engineers, AFL—CIO, as the collective-bargaining representative of our unit employees by unilaterally laying off unit employees. The appropriate unit is:

All full-time and regular part-time operating engineers, including equipment operators, maintenance, land-fill/utility employees, mechanics and yardmen employed by us at our Trenton facility; but excluding all professional employees, office clerical employees, and guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the decision to lay off unit employees Reginald Truitt, James Howard, and David Spurr and the effects of that conduct, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL, within 14 days from the date of the Board's Order, offer Reginald Truitt, James Howard, and David Spurr full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and any other rights or privileges previously enjoyed.

WE WILL make Reginald Truitt, James Howard, and David Spurr whole for any loss of earnings and other benefits suffered as a result of their unlawful layoffs, with interest, in the manner set forth in the remedy section of this decision.

<sup>&</sup>lt;sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful layoffs and, within 3 days thereafter, notify the laid-off employees in writing that this has been done and that the layoffs will not be used against them in any way.

GIBRALTAR LAND COMPANY D/B/A COUNTY-WIDE LANDFILL